



Office of the Attorney General  
State of Texas

June 30, 1993

DAN MORALES  
ATTORNEY GENERAL

Ms. Kerrie Qualtrough  
Staff Attorney  
Texas Water Commission  
P. O. Box 13087  
Austin, Texas 78711-3087

OR93-387

Dear Mr. Qualtrough:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20002.

The Texas Water Commission (the "commission") received an open records request for the "rejected" job applications<sup>1</sup> associated with various job postings. You have submitted to this office for review a representative sample of the requested applications and contend these documents come under the protection of sections 3(a)(1) and 3(a)(2) of the Open Records Act.

We note at the outset that information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In other words, a governmental body cannot, through a contract or agreement, overrule or repeal provisions of the Open Records Act. Attorney General Opinion JM-672 (1987). Consequently, unless the requested records fall within one of the act's exceptions to disclosure, they must be released.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 3(a)(2) protects, *inter alia*, "information in personnel files, the disclosure of

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<sup>1</sup>We assume that because you have also submitted to this office for review copies of the applicants' resumes that the commission considers the resumes a part of the application.

which would constitute a clearly unwarranted invasion of personal privacy." The scope of section 3(a)(2) protection is the same as that of section 3(a)(1). *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider the applicability of these two exceptions together.

A job applicant's file constitutes a personnel file for purposes of section 3(a)(2). Open Records Decision No. 361 (1983). Please note, however, that the protection of section 3(a)(2) is very narrow: to be protected from required disclosure under section 3(a)(2) the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert at 550*. See also Attorney General Opinion JM-36 (1983); Open Records Decision No. 336 (1982).

Your request is governed by a prior decision of this office. In Open Records Decision No. 455 (1987) (copy enclosed) this office held that each of the following types of information are *not* protected by common-law privacy: applicants' educational training; names and addresses of former employers; dates of employment; kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performances or abilities; birth dates, height and weight, marital status, and social security number. Consequently, you must release these types of information with regard to all of the job applicants.

For similar reasons, this office generally believes that a public employee's prior conviction of a felony is also of legitimate public concern and thus also not protected by section 3(a)(2). Compare *United States Dept. of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989) (criminal history of private citizen protected by privacy) with *Plante v. Gonzalez*, 575 F.2d 1119, 1135 (5th Cir.) *cert.denied*, 439 U.S. 1129 (1979) (privacy rights of public employees not as broad as those of a private citizen). In any event, none of the representative samples of the applications submitted to this office contain information that implies that the applicant has been convicted of a felony; consequently, these records must be released in their entirety. However, if you believe that any of the other requested applications contain such information that should be withheld from the public pursuant to section 3(a)(2) in light of the discussion above, you must submit that information to this office for review within ten days of the date of this letter.<sup>2</sup>

Finally, we address whether you must release the applicants' home address and telephone number. Section 3(a)(17) of the Open Records Act requires that the commis-

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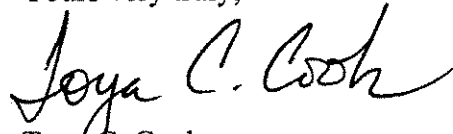
<sup>2</sup>You must, however, release the remaining portions of those applications at this time.

sion withhold its *employees'* home addresses and telephone numbers, but only to the extent that the employees have elected to keep this information confidential in compliance with section 3A of the Open Records Act. The employees must have made this election prior to the department's receipt of the current open records request; otherwise the city must release the addresses and telephone numbers. Open Records Decision No. 530 (1989). Section 3(a)(17) does not protect the home address and telephone number of job applicants. Open Records Decision No. 455.

In summary, no portion of the applications and resumes submitted to this office for review comes under the protection of section 3(a)(2) and thus these and similar records must be released in their entirety. If you believe that portions of other requested applications and resumes are protected by privacy interests, you must submit the information to this office with an explanation as to how the information substantially differs from that which we rule on here. The commission may withhold an *employee's* home addresses and home telephone numbers only if the employee has elected to keep this information confidential prior to the commission's receipt of the current open records request.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Toya C. Cook  
Assistant Attorney General  
Opinion Committee

TCC/RWP/jmn

Ref.: ID# 20002  
ID# 20438

Enclosures: Open Records Decision No. 455  
Submitted documents

cc: Mr. Mark A Vanoni  
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(w/o enclosures)